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3 1388 Sutter St., Suite 820  
4 San Francisco, CA 94109  
5 Telephone: (415) 923-1380  
6 Facsimile: (415) 923-1382  
7 ZeffLaw1@aol.com

8 Attorneys for Defendant  
9 Kevin Russell

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 ROBERT JACOBSEN,  
14 Plaintiff,  
15 vs.  
16 MATTHEW KATZER, KAMIND  
17 ASSOCIATES, INC., and KEVIN  
18 RUSSELL,  
19 Defendants.

) Case No. C 06 1905 JSW  
)  
) DECLARATION OF DAVID M.  
) ZEFF IN SUPPORT OF AWARD  
) OF ATTORNEYS FEES UPON  
) GRANTING OF SPECIAL  
) MOTION TO STRIKE  
) PLAINTIFF'S CLAIMS AGAINST  
) KEVIN RUSSELL UNDER CAL.  
) CIV. PROC. CODE § 425.16  
)  
) Date: August 11, 2006  
) Time: 9:00 a.m.  
) Dept: Courtroom 2, 17th floor  
) Hon. Jeffrey S. White

20 I, David M. Zeff, declare:

- 21 1. I am the attorney of record for defendant Kevin Russell in this matter. If  
22 called as a witness, I would and could testify to the following as a matter of personal  
23 knowledge.  
24 2. I retain James W. Moore, an attorney with more than 20 years' litigation  
25 experience, to assist me in this and other matters. His services are customarily billed to  
26 my clients at the rate of \$235.00 per hour, which from my experience is much lower than  
27 the amounts normally charged by attorneys of comparable skill in the San Francisco area.  
28 I have carefully reviewed all of the time billed to my office on this case by James W.

1 Moore, and it correctly reflects services he has rendered to my office and Mr. Russell on  
2 the anti-SLAPP motion prepared for Mr. Russell, which the Court has granted. Mr.  
3 Moore's statements and our billings to Mr. Russell reflect that Mr. Moore performed  
4 84.55 hours of work in helping help me to prepare to argue the special motion to strike.  
5 At \$235.00 per hour, Mr. Moore rendered services on the anti-SLAPP motion in this  
6 matter in the sum total of \$19,869.25.

7 3. I am an attorney with 31 years of litigation experience in San Francisco. A  
8 true copy of my CV is attached hereto as Exhibit 1. My present hourly rates for services  
9 are between \$300.00 and \$450.00 per hour, depending upon the nature of the work done  
10 and ability of the client to pay. On this case, my hourly rate has been \$300 per hour,  
11 which I believe is at the low end of the amounts normally charged by attorneys of  
12 comparable experience and skill in the San Francisco area. I personally know of partners  
13 in large law firms with fewer years experience than I, whom I have recently opposed,  
14 who charge from \$550 to \$750 per hour.

15 4. I have carefully reviewed all of the time billed to the instant case to  
16 determine which services and time were directed to the Russell anti-SLAPP motion. As  
17 explanation, I included some, but not all, of the time Mr. Moore and I spent on  
18 researching and formulating the arguments made on the Motions to Dismiss in this fee  
19 application upon the granting of the anti- SLAPP motion. The reason for this is that even  
20 if Mr. Russell prevailed in his arguments as to the first prong of the SLAPP test, i.e., he  
21 showed that the conduct complained of was an exercise of first amendment or petitioning  
22 rights, he also had to show that the plaintiff does not have any likelihood of success on  
23 any of her claims against him. This of course required the work done on the libel cause  
24 of action and the causes of action, including the patent, inequitable conduct and antitrust  
25 claims, all of which were subsumed in claim 5, the claim of Unfair Business Practices  
26 under Bus. & Prof. Code §17,200. Consequently, all such work on the merits of those  
27 claims was pertinent to and went into the SLAPP analysis and argument.

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**PAGE 2 — ZEFF DECLARATION IN SUPPORT OF AWARD OF ATTORNEYS FEES UPON GRANTING  
OF SPECIAL MOTION TO STRIKE BY K. RUSSELL**

LAW OFFICES OF DAVID M. ZEFF  
1388 SUTTER STREET, SUITE 820  
SAN FRANCISCO, CA 94109  
(415) 923-1380

1           5.       Based upon that review, I have performed 67.35 hours of work in review of  
2 the operative pleadings, researching the facts and law, drafting, editing and filing the  
3 opening and reply memoranda and declarations, reviewing the opposing memoranda and  
4 declarations, and preparing for the argument and arguing Mr. Russell's special motion to  
5 strike. Utilizing my lower hourly rate charged in this case of \$300.00 per hour, the total  
6 value of my services of 67.35 hours in bringing this motion are valued at \$20,205.00.

7           6.       Combining the value of my services and those of Mr. Moore, the total value  
8 of the attorneys fees incurred by Mr. Russell in bringing the successful anit-SLAPP  
9 motion herein is the sum total \$40,074.25.

10          7.       The time records of Mr. Moore and my office are maintained on computers.  
11 Mr. Moore sends me his computerized billing by fax. Each statement Moore renders to  
12 my office covers a separate client for each month. Mr. Moore's bills show the particular  
13 task performed and hours or fractions thereof for each task for each day. My time records  
14 are maintained on my computer in the same way, showing particular task performed and  
15 hours or fractions thereof for each task for each day. After the end of each month, my  
16 assistant inputs my billing records and Mr. Moore's into a TimeSlips program which then  
17 sorts each billing entry, prints it, ads the time and charges and provides a statement of  
18 current and past balances due.

19          8.       On August 18, 2006, I emailed the operative portions of paragraphs 2  
20 through 6 above (portions of paragraph 4 were added later) to opposing counsel, Ms.  
21 Hall, for the purpose of meeting and conferring on this fee application, pursuant to N. D.  
22 Cal. Rule 54-6. I thereafter received a reply email from Ms. Hall stating that she could  
23 not address the contents of my declaration because she and her client were traveling until  
24 August 25, 2006. She also stated that my client could not be awarded attorneys fees  
25 because he had been dismissed from the action. On August 22, 2006, I replied that  
26 neither position was tenable and that I did not consider her response to be meeting and  
27 conferring in good faith. Later on August 22, 2006, I sent Ms. Hall a true copy of this  
28 declaration as redrafted, without the attached exhibits. She thereafter replied with an

1 email of 8/23/06 stating that she would, pursuant to Local Rule 54-2(b) meet and confer  
2 with me prior to filing objections, if any, and stating that Rule 54-1(a) required that the  
3 declaration provide "detailed information—invoices, time logs, and the like." I responded  
4 with my email of 8/24/06, directing Ms. Hall to Rule 54-6 as relating to attorneys fee  
5 applications and offering to further meet and confer. A true copy of the email "meet and  
6 confer" process between Ms. Hall and I through the date of this declaration is attached  
7 hereto as Exhibit 2. At 12:30 p.m. PST I telephoned Ms. Hall's office to meet and confer  
8 with her by telephone, but only received her voicemail, leaving a message. I then efiled  
9 this declaration.

10 I certify under penalty of perjury under the laws of the State of California that the  
11 foregoing is true and correct.

12 Dated: August 24, 2006

  
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David M. Zeff

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**ZEFF DECL. EXHIBIT 1**

**DAVID MICHAEL ZEFF**

1388 Sutter Street, Suite 820  
San Francisco, CA 94109  
(415) 923-1380

Zefflaw1@aol.com

Facsimile: (415) 923-1382

Martindale-Hubbell rating: A/V

Admitted to the California Bar  
December 18, 1974

Hastings College Of The Law,  
Juris Doctorate Degree, 1974

S.F. Bar Association Award  
Of Merit, 12/17/86

A.B. History, U.C. Berkeley,  
1971

1983 to 1990, Chairperson,  
Bar Association of San Francisco,  
Committee On Arbitration of Fee Disputes

Former Member, State Bar  
Committee on Mandatory  
Arbitration (Two Terms)

Current Chairperson, Bar Association  
of San Francisco Committee on  
Arbitration of Partnership Dissolutions  
and Fee Disputes Between Attorneys

1979 to 1983, Chairperson,  
Bar Association of San Francisco  
Sub-Committee On Enforcement  
of Arbitration Awards

1979 to present, Arbitrator and Member of  
Executive Committee of BASF Committee on  
Arbitration of Fee Disputes

Past Chairperson: Marin  
County Bar Assn. CLE Committee

Court Appointed Arbitrator: Attorney fee dispute: wallach v. Baum, S. F. Sup. Ct. No. 958549.

BASF Appointed Chief Arbitrator: Dispute re: Attorneys fees in Raiders v. Alioto & Alioto

Expert Witness: Zinicola v. Payne, Sacramento Sup. Ct. No. 02AS02282 (2004)

Expert Witness: Declaration re: Attorneys Fees in Del Carlo v. First Commercial Bank, S. Clara  
Sup. Ct. #684298 (1991)

PROFESSIONAL EXPERIENCE

April 1, 1985 to Present: Private practice, Law Offices of David M. Zeff. Counsel in litigation, arbitration and mediation of disputes concerning unfair competition, trade secrets, securities and stock options, commercial litigation, debtor-creditor relations, antitrust, trade regulation, service-mark, trademark, copyright, partnership dissolutions, attorney-client fee disputes, professional malpractice, class actions, plaintiff and defendant personal injury, wrongful termination of employment, ERISA, real property, contracts.

December 1, 1983 to April 1, 1985: Private practice: Wallock & Zeff. Counsel and litigation re: insurance bad faith, personal injury, wrongful termination of employment, class actions, real property, construction and landlord/tenant. Continued practice in the areas of antitrust and trade regulation, unfair competition, trade secrets, service marks and trademarks, contracts and commercial litigation.

September 1, 1979 to November 30, 1983: Founding partner: Froneberger, Bonner & Zeff. Antitrust, trade regulation, federal energy law, business, tort and contract litigation, corporate formation, personal injury, landlord/tenant and family law.

June 1978 to August, 1979: Safeway Stores, Incorporated. One of seven attorneys in the office of the General Counsel. Shared responsibility with Senior Attorney Bernat Rosner (now Retired General Counsel) in antitrust compliance, management of the defense and prosecution of antitrust cases, advertising and promotional allowances, class actions, ICC, FTC, Canadian and state trade regulation hearings and compliance, grand jury matters, mergers and acquisitions.

August, 1975 to June, 1978: Boone, Schatzel, Hamrick & Knudsen: Associate in a practice of antitrust, patent and commercial litigation. Participated in antitrust and lender liability multidistrict litigation as co-counsel with the Alioto firm representing Falstaff Brewing Corporation and Alaska Airlines.

August, 1974 to March, 1976: United States District Court, District of Minnesota. Court Administrator and Counsel to the Special Master in the Consumer Antibiotic Antitrust Cases. Assisted Judge Miles W. Lord and Special Master David M. Lebedoff in managing the consumer class settlement distribution for California, Hawaii, Oregon, Utah, Washington and Kansas. Legal counsel and administrator of the Court's rebate of more than twenty-eight million dollars to 880,000 consumers in the six states.

#### OTHER LEGAL EXPERIENCE

June 1973 to April 1974: California Office of the Attorney General, Antitrust Division, Graduate Student Assistant.

June 1972 to August 1972: State Bar of California. Legislative researcher and analyst. Assistant on disciplinary proceedings.

## REFERENCES

### Clients and Former Clients:

Henry Ming-Hsui Han, President and CEO, Mini Micro Supply Inc. Canada.  
Tel: 416-321-8898 x 2231

Robert Walter, Executive Director, Joseph Campbell Foundation. Tel: (415) 456-6060

Rosanne Esposito, Founder, Busybox.com, Inc. Tel: (415) 336-2876

Kathryn K. Morrison, Vice President, Associate General Counsel, Charles Schwab & Co.  
Tel: 415-636-3170

Guy O. Kornblum, Esq., Kornblum & Associates. Tel: (415) 440-7800

Peter Lund Daniels, COO, House of Daniels, Inc. Tel: (415) 892-6949

Mr. Byron D. Yee, Renoir Hotel, Tel: (415) 626-5200

David B. Fechheimer, Investigator, Tel: 885-5918

John Gorman, Partner, Gorman & Miller, Tel: (408) 297-2222

William McGrane, Trial Group LLP, Tel: (415) 283-1776

Melville Owen, Partner, Owen, Wickersham & Erickson, Tel: (415) 882-3200

Paul Vapnek, Partner, Townsend and Townsend and Crew. Tel: (415) 576-0200

Walter Walker III, Partner, Walker, Hamilton & White, Tel: (415) 986-3339

### Professional References:

Henry C. Bunsow, Partner, Howrey & Simon, Tel: (415) 848-4900

Richard Worsfold, Partner, Basman Smith LLP (Toronto) Tel: 416-860 1966

Thomas F. Smegal, Jr., Partner, Knobbe, Martens, Olson & Bear, Tel: (415) 954-4821

Francis (Frank) O. Spalding, Esq., Tel: (415) 392-0117

Michael I. Spiegel, Partner, Spiegel Liao & Kagay. Tel: (415) 956-5959

Alan Barker, President, Oakland Valve & Fitting, Tel: (510) 676-4100

Bernat Rosner, Retired General Counsel, Safeway Stores Inc., Tel: (925) 735-7748



**ZEFF DECL. EXHIBIT 2**

**ZEFF DECL. EXHIBIT 2**

Subj: **Re: Jacobsen v. KAM, et al. our file 9364: Attorney's fee application--URGENT**  
 Date: 8/24/2006 12:26:10 P.M. Pacific Standard Time  
 From: ZeffLaw1  
 To: victoria@vkhall-law.com  
 CC: raggmop1@pacbell.net, scott@fieldlawfirm.com  
 BCC: kevin@chernofflaw.com, januaryr@osbplf.org(January Roeschlaub,

Dear Ms. Hall:

This email is to respond to yours below, in a final attempt to meet and confer in good faith. This entire email will be attached to my declaration as Exhibit 2.

**To put this matter into perspective, please note that the fees Mr. Russell is claiming are well within the low range of fees customarily approved on these motions by California Courts. Indeed, fees of \$318,000 awarded on the granting of an anti-SLAPP motion were approved in *Metabolife Int., Inc. v. Wornick et al.*, 213 F.Supp.2d 1220.**

My review of ND Cal Rule 54-1 and 54-2, which you cite, shows that those local rules relate to cost bills after judgment, not motions for attorneys fees. Motions for attorneys fees are the subject of Rule 54-6, which we previously cited. Such motions must be supported by declarations which contain 1) a statement that counsel have met and conferred; 2) A statement of the services rendered by each person for whose services fees are claimed together with a summary of the time spent by each person and a statement describing the manner in which time records were maintained. My declaration meets these requirements.

The rule does not require that we " provide the detailed information -- invoices, time logs, and the like" that you believe is required by Rule 54-1(a). Again, Rule 54-1(a) deals with a bill of costs, not attorneys fees. We also note that Rule 54-1, like 54-6, *does not require*, as you state, "detailed information -- invoices, time logs, and the like."

The Rule you cited reads as follows:

#### 54. COSTS

##### 54-1. Filing of Bill of Costs.

(a) **Time for Filing and Content.** No later than 14 days after entry of judgment or order under which costs may be claimed, a prevailing party claiming taxable costs must serve and file a bill of costs. The bill must state separately and specifically each item of taxable costs claimed. It must be supported by an affidavit, pursuant to 28 U.S.C. §1924, that the costs are correctly stated, were necessarily incurred, and are allowable by law. Appropriate documentation to support each item claimed must be attached to the bill of costs.

##### Cross Reference:

See CIVIL R. 5.5 "Attorney's Fees," regarding time and methods for service of pleadings and motions.

Please review my declaration in view of Rule 54-6, not 54-1. I will call you today as a final effort to meet and confer. I will be filing the declaration today, with this entire

**ZEFF DECL. EXHIBIT 2** Thursday, August 24, 2006 America Online: ZeffLaw1

email as Exhibit 2.

Very truly yours, David M. Zeff

In a message dated 8/23/2006 1:18:58 P.M. Pacific Standard Time, victoria@vkhall-law.com writes:

Dear Mr. Zeff,

Per Rule 54-2(b), I will meet and confer with you prior to filing objections, if any, to your bill. As a preliminary matter, I will state that this declaration does not provide the detailed information – invoices, time logs, and the like – that we believe are required per Rule 54-1(a) to support your declaration.

Regards,

Victoria Hall

----- Original Message -----

Subject: Re: Jacobsen v. KAM, et al. our file 9364: Attorney's fee application

From: ZeffLaw1@aol.com

Date: Tue, August 22, 2006 6:03 pm

To: victoria@vkhall-law.com

Cc: scott@fieldlawfirm.com, raggmop1@pacbell.net

Dear Ms. Hall:

In a further effort to meet and confer in good faith, I attach the latest draft of my declaration in support of Mr. Russell's application for attorneys fees, sans the two exhibits, the second of which you have when I send this email.

I will file this declaration on August 24, 2006. If you wish to meet and confer about it, please do so before that date.

Thank you. David M. Zeff

In a message dated 8/22/2006 5:34:08 P.M. Pacific Standard Time, ZeffLaw1 writes:

Dear Ms. Hall:

I write in reply to your email below. I consider your response to be a refusal to meet and confer in good faith.

You claim, *without any supporting citation*, that the Court cannot award the SLAPP attorneys fee sanction provided for in CCP section 425.16, because my client has been dismissed for lack of personal jurisdiction. Remember, the court has jurisdiction over you and your client, since you both remain in the case. Even if your client were the party dismissed for lack of subject matter jurisdiction, the Court would have inherent power to impose sanctions against you or your client under Rule 11. See Schwarzer, *Federal Civil Procedure Before Trial*, Sanctions section 17.35 and cases cited therein. [The Rutter Group, 2006]. There is no basis to conclude that the same power does not apply here, particularly where you and your client remain before the Court and it is your client who is being ordered to do something—pay attorneys fees required by statute.

You also refuse to address, until August 25, any of the contents of my declaration based upon your and your client's travels. You have had since August 18, and we know you and your client know how to use email and other technology. You know the court gave us only until August 25 to file the attorneys fee declaration.

Given your baseless refusal to timely meet and confer, we shall submit the declaration with this email to show the Court our efforts to meet and confer and the quality of the response we received from you and your client.

Sincerely, David M. Zeff

In a message dated 8/19/2006 11:13:01 A.M. Pacific Standard Time, victoria@vkhall-law.com writes:

Mr. Zeff,

I am still in California and will not return to Maryland until late Monday evening. I do not expect to be in the office until Wednesday. My client left for Finland yesterday morning on business and will not return until Aug. 25. I will review your email with him if I am able to reach him before Friday, and if not, then when he returns, and then we will get back to you.

By the way, as I noted to the Court, since the Court has ruled that it did not have personal jurisdiction over Mr. Russell, it cannot rule on the merits of your anti-SLAPP motion. Thus, you have not prevailed in your motion.

Victoria Hall

----- Original Message -----

Subject: Jacobsen v. KAM, et al. our file 9364: Attorney's fee application  
 From: ZeffLaw1@aol.com  
 Date: Fri, August 18, 2006 5:07 pm  
 To: victoria@vkhall-law.com

Dear Ms. Hall:

I am writing pursuant to ND Cal local rule 54-6, to meet and confer concerning the mandatory attorneys fees Mr. Russell is making application to recover based upon the granting of his SLAPP motion by Judge White. The portion of my declaration which sets forth the basis for these claims reads as follows:

" 2. I retain James W. Moore, an attorney with more than 20 years' litigation experience, to assist me in this and other matters. His services are customarily billed to my clients at the rate of \$235.00 per hour, which from my experience is much lower than the amounts normally charged by attorneys of comparable skill in the San Francisco area. I have carefully reviewed all of the time billed to my office on this case by James W. Moore, and it correctly reflects services he has rendered to my office and Mr. Russell on the anti-SLAPP motion prepared for Mr. Russell, which the Court has granted. Mr. Moore's statements and our billings to Mr. Russell reflect that Mr. Moore performed 84.55 hours of work in helping help me to prepare to argue the special motion to strike. At \$235.00 per hour, Mr. Moore rendered services on the anti-SLAPP motion in this matter in the sum total of

\$19,869.25.

3. I am an attorney with 31 years of litigation experience in San Francisco. A true copy of my CV is attached hereto as Exhibit 1. My present hourly rates for services are between \$300.00 and \$450.00 per hour, depending upon the nature of the work done and ability of the client to pay. On this case, my hourly rate has been \$300 per hour, which I believe is at the low end of the amounts normally charged by attorneys of comparable experience and skill in the San Francisco area. I personally know of partners in large law firms with fewer years experience than I, whom I have recently opposed, who charge from \$550 to \$750 per hour.

2. I have carefully reviewed all of the time billed to the instant case to determine which services and time were directed to the Russell anti-SLAPP motion. Based upon that review, I have performed 67.35 hours of work in review of the operative pleadings, researching the facts and law, drafting, editing and filing the opening and reply memoranda and declarations, reviewing the opposing memoranda and declarations, and preparing for the argument and arguing Mr. Russell's special motion to strike. Utilizing my lower hourly rate charged in this case of \$300.00 per hour, the total value of my services of 67.35 hours in bringing this motion are valued at \$20,205.00.

3. Combining the value of my services and those of Mr. Moore, the total value of the attorneys fees incurred by Mr. Russell in bringing the successful anti-SLAPP motion herein is the sum total \$40,074.25."

I will call you on Monday, August 21, to discuss this application and determine if Mr. Jacobsen will oppose this application and, if so, for what reason. If he does, I think it would be instructive for you to disclose the total hours you and any other attorney expended in preparing the evidence and papers Mr. Jacobsen submitted in opposition to the motion.

Have a great weekend. Sincerely, David M. Zeff

**CONFIDENTIAL COMMUNICATION!** This email and any documents accompanying it are privileged and confidential information and are only for the use of the intended recipient. If you are not the intended recipient, your dissemination, distribution or copying of this communication is neither intended, nor allowed. If you have received this email in error, please notify us immediately by telephone, collect, at (415) 923-1380, and return by mail or destroy this message and any copies of this email and documents that accompany it. No waiver of any privilege or right may be inferred from an erroneous delivery of this email. Thank you.